

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA

Plaintiff,

vs.

Case No. 1:20-cr-01484-KWR

SANTIAGO RIVERA,

Defendant.

**ORDER GRANTING MOTION IN LIMINE TO EXCLUDE EVIDENCE OF POSSIBLE
PENALTIES**

THIS MATTER comes before the Court on the United States’ Motion in Limine To Exclude Evidence of Possible Penalties (**Doc. 67**). The United States seeks an order prohibiting Defendant from “asking any question, introducing any evidence, or making any statement or argument, directly or indirectly, that implicates the Defendant’s potential sentence (‘possible-penalties evidence’) while the jury is present.” *Id.* at 1. For the reasons stated herein, the Court finds that the Government’s motion is well taken, and therefore, is **GRANTED**.

“A jury is obligated to reach its verdict without regard to what sentence might be imposed.” *United States v. Greer*, 620 F.2d 1383, 1384–85 (10th Cir. 1980) (quoting *Rogers v. United States*, 422 U.S. 35, 40 (1975)); *see also* Tenth Cir. Criminal Pattern Jury Instr. 1.20 (2021) (“You should not discuss or consider the possible punishment in any way while deciding your verdict.”). Allowing a jury to consider punishment invites jury nullification and is prejudicial. *See Crease v. McKune*, 189 F.3d 1188, 1194 (10th Cir. 1999); *Greer*, 620 F.2d at 1384–85. Thus, “[u]nless a statute specifically requires jury participation in determining punishment, the jury shall not be

informed of the possible penalties.” *United States v. Parrish*, 925 F.2d 1293, 1299 (10th Cir. 1991) (abrogated on other grounds).

Here, the statutes in question, 18 U.S.C. §§ 922(g)(1) and 924, 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and 18 U.S.C. § 924(c)(1)(A)(i), do not require jury participation in determining punishment. Therefore, the Court shall exclude any reference to possible punishment or sentence at trial.

IT IS SO ORDERED.



KEA W. RIGGS
UNITED STATES DISTRICT JUDGE